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BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075			EXAMINER EGWIM, KELECHI CHIDI	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HANS-PETER WEITZEL and KURT STARK

Appeal 2010-005519
Application 10/692,887
Technology Center 1700

Before CHUNG K. PAK, CHARLES F. WARREN, and
CATHERINE Q. TIMM, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

DECISION ON APPEAL

Applicants appeal to the Board from the decision of the Primary Examiner finally rejecting claims 1-15 in the Office Action mailed February 27, 2006. 35 U.S.C. §§ 6 and 134(a) (2002); 37 C.F.R. § 41.31(a) (2006).

We reverse the decision of the Primary Examiner.

Claim 1 illustrates Appellants' invention of a process for the production of a protective-colloid-stabilized base polymer in the form of a water-redispersible powder, and is representative of the claims on appeal:

1. A process for the production of a protective-colloid-stabilized base polymer in the form of a water-redispersible powder, said polymer

comprising a homo- or copolymer of one or more monomers selected from the group consisting of vinyl esters of optionally branched alkyl carboxylic acids having from 1 to 15 carbon atoms, (meth)acrylic esters of alcohols having from 1 to 15 carbon atoms, vinylaromatics, olefins, dienes, and vinyl halides wherein said polymer is prepared by emulsion polymerization or suspension polymerization in the presence of a protective-colloid and drying of the polymer dispersion thus obtained after addition of further protective colloid, wherein partially hydrolyzed vinyl acetate-ethylene copolymers with an ethylene content of from 1 to 15 mol %, with a degree of hydrolysis DH of the vinylacetate units of 80 mol % < DH < 95 mol %, and with a Höppler viscosity, in 4 % by weight aqueous solution, of from 2 to 30 mPas, as measured by the Höppler method at 20°C, according to DIN 53015, are used as protective colloids.

Appellants request review of the grounds of rejection under 35 U.S.C. § 102(b) advanced on appeal by the Examiner: claims 1-15 over Mayer '403 (US 6,300,403 B1); claims 1-15 over Mayer '078 (US 2001/0025078 A1); claims 1-15 over Weitzel '978 (EP 1 110 978 A1);¹ and claims 1-15 over Weitzel '224 (EP 1 065 224 A1).^{2,3} App. Br. 3;⁴ Ans. 4, 5, and 6.

Opinion

Our consideration of the ground of rejection entails the interpretation of sole independent claim 1 wherein we give the claim terms the broadest reasonable interpretation consistent with the written description in the Specification. *See, e.g., In re Suitco Surface, Inc.*, 603 F.3d 1255, 1259 (Fed. Cir. 2010), and cases cited therein; *In re Morris*, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997).

¹ We refer to Weitzel '698 (US 6,576,698 B1) as the undisputed translation of Weitzel '978. Ans. 5; App. Br. 3.

² We refer to Weitzel '663 (US 6,605,663 B1) as the undisputed translation of Weitzel '224. Ans. 6; App. Br. 3.

³ The Examiner has withdrawn the grounds of rejection over Nakamae. Ans. 3; App. Br. 3.

⁴ We considered the Appeal Brief filed September 25, 2006.

We determine that the plain language of claim 1 specifies a process for production of a protective-colloid-stabilized base polymer in which the base polymer is prepared by emulsion polymerization or suspension polymerization in the presence of and dried after addition of a protective-colloid, wherein the protective-colloid in each instance must be at least one specified partially hydrolyzed vinyl acetate-ethylene copolymer, which can be the same or different, and any other protective-colloid. *See Spec.*, e.g., 8:20-23, 10:10-11, 10:18 to 11:3, 13:9-10, and 17:2-4. Compare the language of claim 1 with that of claim 11: “polymerizing by an emulsion polymerization process where partially hydrolyzed vinylacetate-ethylene copolymers are the sole protective colloids employed.” Ans. 7-8 and 9; App. Br. 5-6 and 7; Reply Br. 1-3 and 8. The partially hydrolyzed vinyl acetate-ethylene copolymer is defined in claim 1 as having the specified ethylene content, degree of hydrolysis of the vinyl acetate units, and Höppler viscosity.

We agree with Appellants that the Examiner erred in finding that each of Mayer ‘403 (col. 5, l. 11 to col. 6 l. 5, and col. 6, l. 58 to col. 7, l. 15), Mayer ‘078 (¶¶ 0025-0030 and ¶¶ 0036-0037), Weitzel ‘698 (col. 5, 14-59, and col. 6, l. 38 to col. 7, l. 5), and Weitzel ‘663 (col. 5, ll. 3-50, and col. 6, l. 45 to col. 7, l. 11) would have described to one skilled in the art a process for production of a protective-colloid-stabilized base polymer in the form of a water-redispersible powder wherein the polymerization to form the base polymer and the drying thereof is conducted in the presence of a partially hydrolyzed vinyl acetate-ethylene copolymer specified in claim 1 within the meaning of § 102(b). App. Br. 6-7; Ans. 4-7 and 9. We find that in the portions of each of the Mayer and Weitzel references relied on, one skilled

in the art can identify disclosure which would result in a partially hydrolyzed vinyl acetate-ethylene copolymer as a protective-colloid that can be used in a polymerization step, but none of the references contain any disclosure which would result in a partially hydrolyzed vinyl acetate-ethylene copolymer as a protective-colloid that can be used in a drying step. We further find that in each of the Mayer and Weitzel references, the disclosure resulting in a partially hydrolyzed vinyl acetate-ethylene copolymer as a protective-colloid as claimed for the polymerization step, the copolymers are members of a large listing of optional protective-colloids for that purpose.

In this latter respect, the Mayer and Weitzel references do not provide a “pattern of preferences” which lead one skilled in the art to use a claimed partially hydrolyzed vinyl acetate-ethylene copolymer in the polymerization step without the necessity for judicious selection from the large listing of optional protective colloids for that purpose. *See, e.g., In re Sivaramakrishnan*, 673 F.2d 1383, 1385 (CCPA 1982) (“[T]he fact remains that one of ordinary skill informed by the teachings of [the reference] would not have had to choose judiciously from a genus of possible combinations of resin and salt to obtain the very subject matter to which appellant’s composition per se claims are directed.”); *In re Schaumann*, 572 F.2d 312, 316-17 (CCPA 1978) (claim 1 of the reference “read in conjunction with the signification given the expression ‘alkyl radical’ in the specification, embraces a very limited number of compounds closely related to one another in structure” leading “inevitably to the conclusion that the reference provides a description of those compounds just as surely as if they were identified in the reference by name”); *In re Petering*, 301 F.2d 676, 681 (CCPA 1962) (the reference “describes to one skilled in this art not only the broad class

but also [a] much more limited class within that broad class” and “one skilled in this art would, on reading the [reference], at once envisage each member of this limited class”). Thus, contrary to the Examiner’s contention, a prior art reference must do more than provide a disclosure that can result in a claimed hydrolyzed polyvinyl acetate ethylene copolymer in order to anticipate the claims. Ans. 9.

Accordingly, the Mayer and Weitzel references would not have described to one skilled in the art a process in which a claimed protective colloid is used in the polymerization step and as a drying aid as claimed in claim 1 with sufficient specificity to constitute anticipation. Therefore, in the absence of a prima facie case of anticipation, we reverse the grounds of rejection of claims 1-15 under 35 U.S.C. § 102(b).

The Primary Examiner’s decision is reversed.

REVERSED

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